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NOTES OF RECENT CASES.

Krishnaswamy Reddy, J
9th February, 1968

Executive Officer, Mettur Township Committee, Mettur *v.* M K Srinivasan.
Crl A No. 611 of 1965

Madras District Municipalities Act (V of 1920), *section* 347—*Offences under the Act—Cognizance if complaint made within three months of continuation order and its service—Two notices issued under the Act—Which to be taken—Relevant considerations—Fresh circumstances intervening between two notices.*

In respect of an unauthorised construction put up by the respondent, the Executive Officer of the Township issued a notice directing him not to proceed with the further construction in the remaining portion and asking him to send an application for licence, and after issuing a notice on 29th May, 1964 the Executive Officer passed a final order on 17th October, 1964 and issued a notice to him The respondent in the meanwhile on 16th October, 1964 sent an application The Township refused the licence and sent a communication to the respondent on 11th January, 1965 On 2nd February, 1965 a provisional order was served on him to demolish the building and the final order which was passed on 11th February, 1965 was served on 19th February, 1965 The prosecution was instituted on 5th June, 1965 On the question if the complaint is sustainable.

Held, the prosecution is within time and it was the final order which was served on 19th February, 1965 which will give cause of action for instituting prosecution

The question whether a second notice could be issued when already in respect of the same matter a final notice was issued, depends upon the facts of each case If it is found that after the first final notice was issued, no fresh circumstances intervened and no proper explanation is given, the second final notice can be construed as one issued to circumvent the provisions of law for gaining time.

In this case there was such an intervening circumstance, because the respondent who wanted his matter to be considered just a day before the first final order was passed and that was in fact considered and after consideration, the second final order was passed which is perfectly justified.

The decision in *Ramachandra Chetty*, In re, (1926) 50 M L J 557. which agreed, with the decision in Crl R C No. 164 of 1925 that where no steps have been taken to enforce the first requisition, the authority is entitled to make a second and to institute a prosecution to comply with it, referred

S. Mohankumaramangalam for *S. Sethuratnam* and *R Kallappan*, for Appellant.

G K. Damodar Row and *Miss Lakshmi Panicker* for Respondent.

V.S

Appeal allowed
Respondent convicted

Ramakrishnan, J.
29th July, 1968.

Amar Stores represented by its partner M T M Abubacker *v.* The Collector of Madras.
W.P No. 4369 of 1965.

Stamp Act (*II of* 1899), *section* 56—*Order of Collector levying duty and penalty on a document—Appeal to Board of Revenue as the Chief Controlling Revenue Authority—Request for a Personal hearing of the appeal—Order without personal hearing sustaining levy of stamp duty—Validity—Writ.*

The petitioner produced an agreement before the Registrar of Trade Marks for the purpose of transferring the Trade Mark The Registrar sent the document to the Collector of Madras for impounding as he was of the opinion that it was really a sale deed The Collector decided that it was a sale deed liable to Stamp duty and penalty The Petitioner filed an appeal to the Board of Revenue and requested a personal hearing, but the Board upheld the order of the Collector without hearing the petitioner Hence the writ petition.

Held, the requirements of natural justice had to be followed in this case where the Board of Revenue was requested by the aggrieved party to interfere in a quasi-judicial capacity That requirement carried with it an obligation to give the party a personal hearing

The Board of Revenue, as the Chief Controlling Revenue Authority has taken up the application of the party for disposal as an appeal against the orders of the Collector It has written out an elaborate order convassing the grounds set out by the party in his petition of appeal From the circumstances of the case it is to be held that what was exercised by the Board of Revenue in this case was not an administrative function, but a quasi-judicial function invoked for the purpose of modifying the orders of the Collector in favour of the aggrieved party. In such a case the authority has to act quasi-judicially just as in the case under section 56 (2) This carries with it an obligation to give opportunity to the party for being heard especially when large amount of duty and penalty is involved and where the party himself has also asked for a personal hearing

T Martin, for Petitioner

J Kanakaraj, for Government Pleader

V S

Petition allowed

Kailasam, J.
12th August, 1968.

Mahalakshmi Textile Mills, Pasumalai, Madurai *v* Government of Madras
W P. Nos 892 and 893 of 1968.

Payment of Bonus Act (*XXI of* 1965), *sections* 10 *and* 36—*Payment of minimum bonus—Exemption from payment—No absolute power in the Government to refuse to grant exemption—Relevant considerations including financial position to be taken note of—Order giving reasons to be passed.*

Though section 10 of the Payment of Bonus Act requires payment of a minimum bonus of 4 per cent. reading sections 10 and 36 together would make it clear that it is the duty of the Government to have regard to the financial position and other relevant circumstances of an establishment and grant exemption in appropriate cases. The Govrenment do not have an absolute discretion to refuse to grant exemption. It has to exercise its mind, come to its conclusion and pass an order giving reasons therefor.

M.K. Nambiar for *K K. Venugopal* and *L M V Subramanian*, for Petitioner

Government Pleader on behalf of the State.

V S.

Petitions allowed

Srinivasan and *Sadasivam, JJ.* *4th September,* 1967. — Saleha Bi *v.* A. Hajee Abdul Rahim Saheb & Co. A S Nos. 189 & 500 of 1962.

Principal and Agent—Liability to account—Agent—Not merely to submit written accounts ut also to explain—No demand for an explanation—Stated and settled accounts—Practice—'ontract Act (IX of 1872), *section* 213.

An agent is not discharged from his duty to render an account merely by the ibmission of a set of written accounts. His duty also consists in explaining them 'herever necessary and in producing vouchers and the like in respect of any expendiire that may have been incurred for and on behalf of the principals Though, ɔ doubt, this part of the duty cannot be avoided, it would still be a question of fact ı each case, whether the accounts submitted are not self explanatory or at least hether, in the absence of any demand for an explanation, one can still say that the ʒent's duty has not been discharged.

Where the principal never took any objection to the accounts submitted by the ʒent from time to time, but went further and incorporated the effect of these ccounts into their own accounts, the conclusion can be drawn that it was regarded y both parties as a stated or settled account at the end of each month.

Messrs. Rao and *Menon* and *P. V. Chalapati Rao,* for Appellant.

G. Ramakrishna Iyer, P. P. Selvarajan, S. Abdul Salam, Messrs. M. R. Krishnan ıd *S M. Amjad Nainar* and *P. S. Selvarajan,* for Respondents.

V.S. — *Appeals dismissed.*

Veeraswami and *Alagiriswami, JJ.* *17th September,* 1967. — K. S. Doraiswami Nadar *v.* Vinayaka Ratnaswami Nadar. A.S. No. 161 of 1962.

Partition suit—Application for passing final decree—No limitation—Not an application execution but one in a pending suit—Limitation Act (XXXVI of 1963), *Articles* 136 *and* 37*—Not applicable—Dismissal of suit itself—Not sustainable—Practice.*

The lower Court dismissed an application for passing a final decree in a partiɔn suit as time barred and also dismissed the suit itself. On appeal,

Held, an application for passing a final decree in a partition suit is not in execuɔn but in a pending suit and as such any number of applications for passing a ıal decree in parts are permissible. Neither Article 136 nor Article 137 of the ımitation Act of 1963, nor the corresponding Articles of the Act of 1908 would ›ply to applications for passing final decrees. The lower Court went wrong in smissing the suit itself.

S. Sitarama Ayyar and *S. Rajarama Ayyar,* for Appellant.

V. Ratnam, for 2nd Respondent.

V.S. — *Appeal allowed.*

Ramakrishnan, J. *26th March,* 1968. — Sri Bharathi Mills, Pondicherry *v.* D Krishnaswami. S.A. (Labour) Nos. 315 of 1965 and 318 of 1967 (P.)

Industrial Dispute—French Labour Code of 1952, *Article* 42*—Termination of service of ›rker—If one in pursuance of contract of service or one of dismissal for misconduct—uestion of fact depending on circumstances—Form of order—Immaterial—Chakravarthy vard—Wrongful breaking of contract of service—Liability to pay damages—Measure—One ›nth's pay for each year of service.*

The question whether the order of termination of service of a worker is in reality ı order in pursuance of the contract of service or one of dismissal for miconduct, a question of fact to be decided on the facts and circumstances of each case The rm of the order is immaterial.

The notice terminating the services of the worker starts with a preamble that the management was satisfied that the worker was negligent in the execution of his duty in spite of repeated warnings and that this negligence had caused much financial loss to the Mill and also loss of reputation These imputations made against the worker clearly amount to imputations of misconduct. Read with these imputations, the subsequent order terminating his services could properly be viewed as an order amounting, in substance, to the punishment of dismissal.

The provisions of the Chakravarthy Award clearly require the holding of an enquiry with opportunity to the worker to show cause. In the above circumstances the Tribunals below were clearly entitled to conclude that this was a case of wrongful breaking of the contract of service with a liability on the part of the management to pay damages under Article 42 of the code.

So far as the claim for damages is concerned, the quantum of damages had been calculated on the basis of one month's pay for each year of service, which is a valid principle recognised in analogous claims under the Indian Industrial Disputes Act

Vedantham Srinivasan, for Appellant.

S. Ramaswami, for Respondent.

V.S. ——— *Ordered accordingly*

Natesan, J. Arunachala Mudaliar *v*
27th September, 1968. Subramania Kalathi Mudaliar
S.A. No. 1630 of 1964

Possession—Government land—Person building temple on such land—Possession till death—Continuance of possession of plaintiff, the heir—Neither title nor possession with defendant—Possession of plaintiff, to be upheld.

Where a person built a temple on Government land and was in possession till his death and the plaintiff as his heir was in possession of the property and when the defendant has no present right to possession of the property and no present title to the property, the plaintiff's possession cannot be disturbed except in due course of law. So long as the Government has not challenged the plaintiff's possession, it was not open to any person not in possession to interfere with the plaintiff's possession of the property.

R. Sundaravaradhan, for Appellant.

C. Natarajan, for Respondent.

V.S. ——— *Appeal allowed*

Alagiriswami, J. Subramania Iyer *v*
19th November, 1968. Kandaswamy Chetty
S A. No. 608 of 1964

Limitation—Plaintiff, by obtaining money on mortgage, providing defendant to satisfy decree against him—Suit against plaintiff by his creditors and satisfaction of that decree—Plaintiff's suit against defendant for recovery of sum provided by him—Limitation—Starting point—Is it from the date of payment to defendant or from the date of satisfaction of decree against plaintiff.

Held, there is no relationship of principal debtor and surety as between plaintiff and defendant. It is either a relationship of a mere creditor and debtor or a case where the plaintiff has paid money payable by the defendant and, therefore, entitled to sue. But the money having been paid in 1951, the period of limitation begins to run from that date. There is no specific contract of indemnity and it is not a case where plaintiff was a surety for the defendant and therefore, was entitled to be indemnified. Held claim was barred by limitation.

I.L.R 26 Mad. 322; I.L R. 29 All. 627; A.I R. 1921 Lah. 335; 104 I.C. 41[illegible] and A I.R. 1936 Mad. 334, referred to.

R. S. Sundaravaradhan, for Appellant.

N. Sivamani and *M. V. Krishnan*, for Respondent.

S.V.J. ——— *Second Appeal dismissed; No leave*

Alagirswami, J.
7th December, 1967.

Shaik Mathar *v.*
Union-Assistant Collector of Customs,
Tiruchirappalli
Crl. R.C.No 950 of 1966.
Crl R.P No 933 of 1966

Criminal Trial—Confession—Retracted confession—Corroboration—Necessity—Rule of dence rather than rule of law—Discovery of body or articles in relation to offence—Conduct accused—May amount to corroboration

In the retracted confession made by the petitioner-accused, he stated that he ew that the packets contained watches and that he agreed to place them in the box because he was expecting some money, that he knew that the packets conned smuggled watches that to assist in the smuggling was a crime and that he s making the statement voluntarily The watches were recovered and at the ie of recovery, the petitioner was absent for two days. On the question of the dentiary value of the retracted confession.

Held: That a retracted confession needs corroboration is a rule of prudence rather in a rule of law It is only in serious cases like cases of murder that corroboration isually insisted upon There is no rule that even in the case of retracted confesn, corroboration is absolutely necessary if the Court is satisfied that the confession s been made voluntarily.

The corroboration need not necessarily be by the evidence of some other witsses. Corroboration can take the form of discovery of the body or articles in ation to which the offence has been committed Corroboration can be furnished n by the behaviour of the accused.

On facts, there is nothing to show that the confession has not been made volunily and even apart from the question whether the confession by itself alone can acted upon, there is sufficient corroboration furnished by the recovery of watches d the conduct of the petitioner in keeping away from the place at the time of the rch.

K.S. Naidu and *A. Venkatachalam*, for Petitioner.

Calvin Jacob, for the Public Prosecutor on behalf of the State.

V.S. ——— *Petition dismissed.*

Ramaprasada Rao, J.
19th April, 1968.

Annavi Moopan *v.*
Munia Moopan.
C.R.P. No. 722 of 1966.

Madras Cultivating Tenants' (Payment of Fair Rent) Act (XXIV of 1956), *sections* 4, *—Fair rent—Fixation with reference to paddy—Subsequent raising of sugarcane—No eement to pay enhanced rent—Claim for reasonable market rent—Sustainable by civil Court—idlord and tenant—Civil Procedure Code (V of* 1908), *Order* 7, *rule* 7*—Relief be specifically stated—Rent or compensation.*

Fair rent was fixed in respect of the leasehold paddy lands, under the Act in 56. The tenant in 1963, raised sugarcane crop in the lands without the permisn of the landlord and without obliging himself for payment of any enhanced rent. e suit filed by the landlord for recovery of an estimated rent was dismissed by the ver Courts on the basis that the fair rent fixed in 1966 alone will govern Hence revision to the High Court by the landlord.

Held: The claim for enhanced rent on the score that the tenant raised sugarie would be sustainable

The Fair Rent Act whilst providing for the fixation of fair rent in the case of t land where the normal produce is paddy, it avoids to advert itself to cases where main crop is sugarcane, plantain or betel vines, etc If sugarcane is the main p raised by the tenant, nothing in the Act of 1956 shall apply to such a land during

the period when such land is used for such a crop The fair rent fixed under t Act cannot have any effect on the claim for an enhanced rent by the landlord, (the basis that the tenant is raising sugarcane and not the ordinary wet crop paddy.

Where the tenancy does not expressly connote the rent payable by the tena to the landlord, then the Courts have jurisdiction to fix what is known as reasonab market rent for the property and avoid unjust enrichment to the tenant.

Under Order 7, rule 7, Civil Procedure Code, the Court is entitled to gra such relief as it thinks just and as is necessary in the circumstances of the ca: Though the nomenclature employed by the plaintiffs is rent, yet they have to l paid reasonable compensation which has to be evaluated.

K. Sarvabhauman and *T. R. Mani*, for Petitioner.

Respondent not represented.

V.S. ——— *Petition allowe*

Veeraswami and *Ramaprasada Rao, JJ.* *29th October*, 1968.

M. P S. S. Soundaram, President, S Pathirakaliamman Festival Exhibitic Committee, Sivakasi
Entertainment Tax Officer *cum* Depu Commercial Tax Officer, Sivaka:
W.P. No. 1740 of 196

Madras Entertainments Tax Act (IX of 1939)—Licence to exhibit cinema shows- Separate entrance and free admission, the conditions—Best judgment assessment—Basis, admi sions were charged—Information on enquiry—Grounds not disclosed to assessee in proceedings- Infraction of principles of natural justice—Liable to be quashed– Writ.

Licence for cinema shows was granted to the petitioner on the express conditic that there should be a separate entrance and admission should be free But tl Officer found that there was no separate entrance and on the basis of certain enquiri (grounds of which he did not disclose to the petitioner) that admission was charge at 15 paise per head. The writ petition is to quash the orders of best judgme: assessment.

Held : The orders have to be quashed as they amount to infraction of principl of natural justice.

The materials collected by the Department behind the back of the assessee ma well be used by the Department to initiate proceedings, but cannot be used, in suc proceedings, to the prejudice of the assessee unless he has been given a proper ar reasonable opportunity of answering such materials. There is no question of di cretion vested in the Department on this matter. If statements of witnesses ha been recorded, which were proposed to be used against the assessee in the proceedin and the assessee asked for an opportunity to cross-examine these witnesses, it is pa of the requisites of natural justice that such cross-examination should be allowed.

S. Padmanabhan for *Subbaraya Ayyar, Sethuraman* and *Padmanabhan*, for Petitioner:

Assistant Government Pleader on behalf of the Respondent.

V.S. *Petition allowe*

Alagiriswami, J.
19th November, 1968.

Parthikottai Village Welfare Sangam, by its President *v.* Palaniyandi.
S A. No. 264 of 1965.

Registration Act (XVI of 1908), *section* 77 *and Limitation Act (IX of* 1908), *sections* ; *and* 14— *Civil Procedure Code (V of* 1908), *section* 100—*Presentation of document to Sub-Registrar for registration—Refused—Appeal to District Registrar—Dismissed—Suit for compulsory registration in the Court within whose jurisdiction District Registrar is situate instead of suit in the Court within whose jurisdiction properties are situate—Return of plaint on the ground it has no jurisdiction—Presentation to proper Court—Whether plaintiff entitled to benefit under section* 14 *of Limitation Act*

A distinction must always be drawn between a case of negligence on the part of a litigant and negligence on the part of a lawyer.

Where the mistake is that of the litigant himself or the litigant's action shows lack of *bona fides*, he will not be entitled to the benefits under section 14. On the other hand, even if he has acted upon the advice of a lawyer that would not automatically entitle him to the benefit of section 14. But in the absence of any bias, the Court is entitled to assume that the lawyer was acting *bona fide*. It is enough, if the advice given by the lawyer is such as would *prima facie* be correct, though on a thorough research and enquiry it might turn out to be not correct. The very fact that it turns out subsequently that the advice was not correct, cannot show that the lawyer was either wanting in *bona fides* or was negligent or careless. Otherwise section 14 of the Limitation Act would have no place at all. The basic fact, however, should not be forgotten that the power of section 5 as well as section 14 should be exercised in furtherance of the cause of justice It is only in rare cases that a plaintiff would be refused relief under section 14, cases more or less of deliberate attempt to drag on the proceeding. Applying these tests, it cannot be said that the Advocate who advised the appellant in this case, was either acting with bias or with gross negligence or without due care or attention and that the view as to jurisdiction based on the jurisdiction of the Court within which the property is situate, as also on the last order with reference to which the suit is filed as that of the District Registrar in this case, is so palpably unreasonable, that the plaintiff should be made to suffer. *Held*, plaintiff is entitled to the benefit of section 14 and to have the time taken by the pendency of the suit in Tanjore Munsif's Court excluded.

I.L.R. 12 Mad 467, I L R 13 Mad 269, A.I.R. 1928 Cal. 468, A I.R. 1937, P.C 276, A I.R. 1938 Pat 413, A I.R. 1938 Lah. 704, A I R. 1956 Orissa 129, (1958) S C.J. 963, A.I.R 1959 Pat 365, A.I R 1961 Orissa 54, A I.R. 1962 S.C. 361, A.I R. 1965 Orissa 193 and (1879) 48 L J. Q.B. 167, referred to.

Held further that it is clear that the question for decision in this case is a question of law.

A.I.R. 1944 Mad 47, 19 I.A. 1 and 229 (P.C.), 45 I.A. 183 (P.C.), and A.I.R. 1963 S.C. 884, referred to.

R. Gopalaswami Iyengar, for Appellant.

K. Venkataramani, S. B. Mani and *V. Subramani*, for Respondent.

S.V.J. *Second Appeal allowed*; *Remanded*.

Kailasam, J.
26*th November*, 1968

C. Kanagavelu *v.*
Tahsildar, Cuddalore, South Arcot Dt.
W P. Nos. 624 and 1165 of 1968

Madras Panchayats Act (XXXV of 1958), *section* 147—*Scope—Motion of no confidence in the President of Panchayat—Tahsildar issuing notice of meeting—Cancellation of the meeting by an order of Collector—Order illegal, as being beyond the powers of Collector—Vitiated also failure to give an opportunity to concerned persons for explanation.*

On receipt of a notice of not confidence motion against the President of the Panchayat, the Tashildar by his notice intimated that a special meeting of the Panchayat will be held on 18th January, 1968 at a certain time The meeting did not take place as the Tashildar was absent and the petitioner learnt on subsequent correspondence with the Collector that the Collector by his order, dated 10th January 1968, had directed the Tahsildar not to hold the meeting since the members who gave notice of the motion had already resigned their membership The petitioner applied under Article 226 of the Constitution

Held: The order of the Collector is unsustainable in that it was beyond his powers and was passed without giving an opportunity to the authority or person concerned for an explanation

Section 147 of the Panchayat Act authorises the Collector to suspend or cancel any resolution passed or order issued, or licence or permission granted by the Panchayat. The three clauses in the section relate to resolution, order, licence, permission or act of the Panchayat and has no reference to a motion of no confidence in the President moved by the members of the Panchayat.

In any event, even if the Collector had purported to act under any of the sub-sections of section 147, he is prohibited from taking any action before giving an opportunity for the authority or person concerned for an explanation.

V. P. Raman and *S R Srinivasan*, for Petitioners.

S. K. L. Rattan, for third Respondent.

S. T. Ramalingam for Government Pleader on behalf of Respondents 1 and 2.

V.S. *Petitions allowed.*

Venkataraman, J. T. M Narayanaswami Asari *v.*
8th April, 1968. State of Madras.
A A O. No. 197 of 1966.

Civil Procedure Code (V of 1908), Order 41, rule 23—Remand of case by appellate urt—Decree of the trial Court—If requires to be set aside—Necessity for such a finding—actice

The plaintiff filed the suit in respect of strip of land lying to the north of his operty, and obtained the decree in the trial Court. The Subordinate Judge lowed the appeal filed by the defendant and dismissed the suit The High Court lowed the second appeal preferred by the plaintiff on the short ground that the ibordinate Judge while relying on his inspection had not made any memorandum the inspection and made it part of the record The High Court remanded the atter for disposal The Subordinate Judge on remand, in turn, remanded the it to the District Munsif with the observation that both parties agreed that it is :cessary to fix the southern boundary and locate the suit property. He also set ide the decree of the Munsif The plaintiff preferred the appeal against this der

Held, it has been repeatedly held that before the appellate Court can remand e suit to the trial Court under Order 41, rule 23, Civil Procedure Code, it is neces- ry for the appellate Court to find that the decree of the trial Court requires to : set aside

On facts, it cannot be said that the District Munsif should necessarily ive proceeded to determine the question with ref rence to the southern boundary the plaintiff's property especially when no request to do so had been made to him. e may have done so, but merely on that ground the Subordinate Judge is not rrect in saying that his decree should be set aside It has been laid down that such cases it is for the appellate Court to take the additional evidence which it quires and keep the appeal on ts file and dispose it off in the light of the said idence.

R Gopalaswami Iyengar and *R. Alagar*, for Appellant.

The Additional Government Pleader and *V Ramaswamy*, for Respondents

V.S. ——— *Appeal allowed.*

Ramakrishnan, J. G Sundararajan *v.*
15th November, 1968. Panchayat Board, Thirukalukundram.
W. P. No. 684 of 1966.

Madras Panchayats Act (XXXV of 1958)—Licence fee from shops using the road margins -Additional income by levy and correlation to any extra expenditure—Not shown by Panchayat -No case of any extra expenditure for supervisory charges—Writ—Levy to be quashed

The petitioner, Secretary of a Road Margin Hawkers' Association and himself trader who through his agents and hired servants hawks vegetables and other ticles on the road marg ns filed the writ petition under Article 226 of the Consti- tion for a writ quashing the resolution of a Panchayat levying a licence fee from iops using road margins.

Held, The levy has to be struck down.

The Panchayat Board has not made any attempt to show what additional icome would be realised by the levy and whether it could be correlated to iy extra expenditure etc , the Panchayat has to incur on account of the permis- on given to the hawkers on road margins.

The attempted explana on by mentioning the services rendered by keeping ie road margin clean, keeping the public road lit, etc., covers only the existing oligations which the Panchayat has to discharge irrespective of whether there are iwkers who sell articles on the road margins or not. There is no reference at all any extra expenditure for supervisory charges.

Circular No 1963 of the Inspector of Municipal Councils and Local Boar dated 15th June, 1954 clearly makes reference to a judgment of the High Cou in Writ Petition No 592 of 1953 (*Venkata Varadhan* v *Executive Officer, Panchayat Boar Kallakurichi and another*), and directs the executive officer of Panchayats that th should take steps to discontinue the levy of licence fees for the use of road by carts other vehicles in which articles for sale are transported or by hawkers who car their wares on their heads The Panchayat Board in this case has contravene the above instructions. The decision mentioned in the circular has made speci reference to hawkers who carry their ware on their heads or carts in which artic for sale are transported It is clear that exhibiting the articles for sale on the ro margins would also fall within the scope of the said decision and the principles la down in it.

There is no plea by the Panchayat that the levy is a tax. On the other har it is admitted to be a licence fee Therefore the decision of the Supreme Cou in *Corporation of Calcutta* v. *Liberty Cinema* (A I.R. 1965 S.C 1107), is distinguis able

S Sundaravaradan, for Petitioner.

J Kanakaraj, for first Respondent.

V.S. *Petition allowe*

Kailasam, J. Southern Railway Mazdoor Union
18th December, 1968 Manager, Southern Railwa
W P. No 3531 of 196

Railway Establishment Manual, paragraph 3610—*According recognition and its wit drawal to association of industrial workers—Rule statutory—Withdrawal of recogniti without notice—Order illegal—Writ.*

The petitioner is a trade union registered under the provisions of the Tra Union Act, 1926 and Class III and Class IV employees of the Southern Railwa are members of the Union The Central Executive Council of the Union passe resolution deciding to advise the members to go on a token strike on 19th Septembe 1968. On 13th September, 1968, the Central Government passed an ordinan prohibiting the staff from going on or joining the strike On 19th Septembe 1968, several members of the Union went on a token strike On 21st Septembe 1968, the impugned order withdrawing recognition was passed In challengi such withdrawal in a writ petition,

Held, Paragraph 3610 of the Indian Railway Establishment Manual deali with according and withdrawing recognition to association of its industrial worke has statutory authority. The failure to comply with the requirement of giving a opportunity to the association to show cause against withdrawal of recognitic would vitiate the order. Even if the paragraph is administrative in characte the withdrawal of the recognition without giving an opportunity to the associatic will be against the principles of natural justice, and the order cannot be sustaine The authority which framed the rule will have to follow that rule whether it statutory in character or not. Even if it is an administrative rule, it is incumbe on the authority to follow the rule.

(1955) 2 M L J. 49, referred.

M/s Aiyer and *Dolia* and *A L Somayaji*, for Petitioners.

Govind Swaminathan, Standing Counsel for the Central Government for *K Jacob* and *S. K. L. Rattan*, for Respondents.

V.S. *Petition allowe*

Srinivasan, J.
8th October, 1968.

S Pachiappa Mudali *v.*
State Transport Appellate Tribunal.
W.P No. 64 of 1966.

Motor Vehicles Act (IV of 1939), *section* 44—*Regional Transport Authority—Officer Indian Administrative Service—Single official—No infringement of section—Power to bend a permit—Delegation.*

The Regional Transport Authority finding that the offence of overloading was ablished suspended the permit for one day. The order was confirmed in appeal the Appellate Tribunal. In a petition under Article 226 of the Constitution,

Held, section 44 of the Act requires that the Regional Transport Authority .ll consist of a Chairman, who has judicial experience and such other officials l non-officials, not being less than two. The proviso enacted that the Regional insport Authority may consist of a single official, if the State Government thought The appointment of an officer of the Indian Administrative Service as the gional Transport Authority does not infringe the section.

Rule 134-A (ii) of the Motor Vehicles Rules empowering the Regional insport Authority to delegate the power to suspend a permit to the Secretary of Regional Transport Authority has been struck down by a Bench in W A No. : of 1966 (*Batcha Saheb* v *Secretary, Regional Transport Authority*). The argument t the Regional Transport Authority having delegated the power of suspension i no longer exercise it must necessarily fail, because the delegation itself has been nd to be invalid.

S. Harihara Ramachandran for *K. Thirumalai*, for Petitioner.

J. Kanakaraj, for Government Pleader, for Respondents.

V.S. *Petition dismissed.*

Veeraswami and
Ramaprasada Rao, JJ.
15*th October*, 1968.

T.M S Abdul Gani, representing the
Estate of T M S Mohamad Abdul Khader *v.*
The Agricultural Income-tax Officer,
Tiruthuraipundi
W.P. No. 2508 of 1965.

Madras Agricultural Income-tax Act (V of 1955), *section* 65—*Compounding of tax—iposition allowed for a year—Death of assessee in the year—Devolution of property on the ;—Compounding in the case of heirs—If allowable for broken periods—Compounding on the 's of entire estate of deceased—Not in accordance with law—Writ*

For the year 1963-64 the assessee had been allowed to compound agricultural ›me-tax payable on his entire estate The assessee died on 18th February, 1964. :ing his lifetime he had made certain gifts and after his death his heirs on whom assets devolved in defined shares, applied as tenants-in-common for composi- i of tax. The officer informed them that since the assessee had died at the fag- of the accounting year, his entire lands should have to be assessed in the hands is legal representatives taken jointly and he proceeded to say that it is proposed evy composition fees for all the lands in the name of the deceased assessee as it ; done in the previous year 1963-64. In a petition under Article 226 of the Con- ition,

Held, the provisions of the Act do not contemplate compounding for broken iods. Where a holder of land who derives agricultural income dies in the middle .n accounting year and the estate devolves not by transfer but by succession on e heirs of his than one, the provisions relating to compounding do not cover such :s The basis of compounding is the extent of the holding and the fixed rate licable thereto and there is no provision for splitting of either the extent of land the rate applicable thereto.

M—N R C

The view of the officer that he could call upon the applicants to consent compounding on the basis of the entire estate of the deceased, is not in accorda with law.

K. R Ramamani for *Subbaraya Ayyar, Sethuraman* and *Padmanabhan*, for Petitioner.

The Assistant Government Pleader, for the Government Pleader for Respondent

V.S. — *Petition dismis.*

Kailasam, J.
1st November, 1968.

O. Chinnaswamy Theva
Executive Officer, Sree Menaks
sundareswarar etc. Devasthanam, Madu
W.P. Nos. 802 and 803 of 19

Madras Hindu Religious and Charitable Endowments Act (XXII of 1959), *sections* 56 *and* 118—*Temple servant—Disciplinary action against—Power in the trustees only—power in the Executive Officer—Writ against Executive Officer dismissing temple servant.*

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), *sections* 49 67.

Under section 56 of the Act of 1959, the servants of the temple, are punisha only by the trustees of the temple, in the manner prescribed under the Act and by the Executive Officer of the temple.

The Proviso to section 67 (1) lays down that the Commissioner shall assign the Executive Officer only such powers and duties as appertain to the administrat of the endowments of the religious institution. The proviso rules out conferm of any power of taking disciplinary action against the temple servants. Section of the Act of 1951 which corresponds to section 56 of the Act of 1959 empowers trustees of religious institutions to take disciplinary action against the temple servar Section 118 of Act o. 1959 which saves rules made etc. under the old Act cannot availed of, as the Commissioner cannot validly empower the Executive Officer take disciplinary action against temple servants under section 67 of Act of 1951 under section 45 of the Act of 1959. The only authority, therefore, is the truste who can take action under the old Act as well as under the new Act. The order the Executive Officer dismissing the temple servants would be without jurisdict and will have to be quashed.

The contention that a writ may not issue against the Executive Officer as he is a person in public authority, cannot avail, because no temple servant can be remo except under the provisions of the Act.

G. Desappan, for Petitioner.

G. Ramanujam and *K. Gopalaswami*, for Respondent.

V.S. — *Petition allou*

Alagiriswami, J.
22nd November, 1968.

Bashyam *v.* Ananthamm
S.A.No. 42 of 19

Civil Procedure Code (V of 1908), *section* 100 *and Order* 41, *rule* 27 (1) (b)—*Pa producing additional evidence before appellate Court, which he could not have produced bef the trial Court—Rejection of such evidence—Propriety of—Whether such refusal prov sufficient cause within the meaning of section* 100 (1) (c)—*Interference.*

Held, this is an eminently fit case where the additional documents sought be produced by the plaintiffs should have been admitted in evidence.

This is a case where the party could not have produced his evidence in the tr Court notwithstanding the exercise of due diligence, because at the time this evide was not necessary at all, and he should have been allowed to produce this eviden The refusal of the lower appellate Court to permit this evidence to be adduced p vides sufficient cause within the meaning of clause (c) of section 100, Civil Proced Code.

The lower appellate Court was directed to receive the evidence produced before and dispose of the appeal afresh.

K Srinivasan and *V R. Gopalan*, for Appellants.

R. Thirumalaiswami Naidu, for Respondents.

S.V J. ——— *Second Appeal allowed and remanded.*

Anantanarayanan, C J.
6th December, 1968.

Kamakshi Ammal *v.*
Hav/Maj S. Rajaraman.
C R P. No. 1598 of 1962.

Limitation—Pronote executed by two co-promisors—Executants not agents of each other—idorsement of part-payment by one co-promisor within three years of the pronote—Second lorsement by the other co-promisor more than three years after the date of pronote but within ee years of first endorsement—Suit on pronote—Limitation—Whether second endorsement can relied on for limitation.

Held, applying the principle laid down in 54 M L J 150, that a person who made second endorsement, more than three years after the date of the document but thin three years of an endorsement of part payment by a co-promisor, must, his conduct, " be deemed to have ratified the first payment " that the endorse-ent by the second defendant can also be relied on for purpose of limitation, and at the suit is in time.

T. S. Kuppuswami Ayyar, for Petitioner.

S.V J. ——— *Civil Revision Petition allowed.*

Srinivasan and
Sadasivam, JJ.
6th January, 1969

State of Madras *v.*
T M.Oosman Haji & Co.
C R P.Nos. 1565 and 1799 of 1963 etc.

Government Grants Act (1895) *section* 3 *and Madras City Tenants Protection Act* (*III* 1922) *section* 1 (3) *proviso and section* 7 (a)—*Whether section* 3 *of Government Grants t prevails over provisions of City Tenants Protection Act—Petition for fixation of fair rent tenants against landlord* (*State*)—*Maintainability.*

A Legislature can by express words, or by necessary implication, take away the ect of section 3 of the Government Grants Act while enacting a particular legisla-n. But for section 3 of the Government Grants Act, the Madras City Tenants otection Act would apply to tenancies in respect of Government lands. The press provision contained in section 3 of the Government Grants Act, taken along th the absence of any provision in the Madras City Tenants Protection Act extend- the Act to Government lands, either expressly or by necessary implication, can ly lead to one inference that the provision of the Madras City Tenants Protection t cannot be invoked contrary to the terms of the Government grants. In view section 3 of the Government Grants Act, the local Legislature did not deem it cessary to include Government grants while amending the Act by introducing proviso to section 1 (3) of the Act giving exemption to lands of the Corporation d certain other public bodies.

Held, section 3 of the Government Grants Act prevails in the instant cases and State is therefore not bound by the provisions of the City Tenants Protection Act, d that the fair rent petitions filed by the tenants are not maintainable against the ite.

Judgment in W.P.No. 45 of 1961, affirmed.

S A.No. 482 of 1964, overruled.

The Additional Government Pleader, for Petitioner in C R P Nos 1565 and 99 of 1963 and Respondents in C.R.P. No. 962 of 1965 and 1297 of 1966.

R. Parthasarathy and *S F Rehman* and *T Chengalvaroyan*, for Responder

M. S. Sundararajan, for Petitioners in C R P No 962 of 1965 and 1297 of 19

S.V J. *C R P. Nos* 1565
1799 *of* 1966 *allou*
C.R P.No. 962 *of* 1965
1297 *of* 1966 *dismis.*

Srinivasan, J
10*th January,* 1969

K. V. Ramanavami Uthsava Dhar
Sabha by its Presiden
State of Madr
C R.P. No 2245 of 19

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 10 (2) (i) *Eviction petition—Non-residential building—Government tenant (for holding vill Munsif's Court) on Rs.* 7 *per month—Persistent default in payment of rent year after yea Plea that sanction to be obtained for payment—Whether justified—Default whether wilful.*

Held, this is not a case where there should normally be any difficulty in obta ing the sanction in advance, for the rent is a paltry sum of Rs 7 per mon Sanction should have been obtained earlier in order to conform to the duty of t tenant to pay rent to the landlord before the prescribed time

It is true that 'wilful default' may connote a deliberate attitude of mi But one can see no reason why persistent default of a similar nature year af year cannot be termed 'wilful default.' The Government should be the very l person to treat its lawful obligations lightly and if the law requires that the ten should pay rent before a particular date every month, one can see no reason holding that the Government, by reason of its being a Government, should altoget be exempt from this legal obligation.

Held, It constitutes wilful default, though the wilfulness is really perhaps the part of the subordinate officers of the Government. Eviction was ordered.

A. Sundaram Iyer and *M R Rajagopalachari*, for Petitioner.

K. S. Bhaktavatsalam for the Additional Government Pleader, for Responde

S.V.J. *Petition allow*

Kailasam, J.
20th December, 1968.

B. R. Venkatachalapathi *v.*
The Commissioner, H R and C.E.
(Admn.) Madras.
W. P. No. 4601 of 1968.

Madras Hindu Religious and Charitable Endowments Act (XXII of 1958), *sections* 46, *—Listed temple—Appointment of trustees—Applications invited—Five trustees appointed—ne of them not accepting the post—Casual vacancy—Mode of filling up—Fresh applications be invited—One of them among original applicants—Appointment without calling for fresh plications—Not valid—Sections* 46, 47 *and* 49—*Trustee appointed by Area Committee for e years for non listed temple—Subsequent notification of temple as listed—No right of the istees appointed by the Area Committee to continue for the full term*

The petitioner was appointed as one of the five trustees of a non-listed temple r five years by the Area Committee Subsequently the temple was notified under ction 46 of the Act as a listed temple After inviting applications for appointent of trustees (the petitioner and others being the applicants) the Commissioner pointed five as trustees The petitioner was not appointed As one of the appoint- trustees intimated his inability to function as trustee, the Commissioner appointed e another from the applicants (not the petitioner) as the trustee. The petitioner allenged such appointment in a writ petition

Held, when a casual vacancy arises, the usual procedure is to notify e vacancy, call for applications and on the report of the authorities, for the Comissioner to appoint a trustee

The plea of the Commissioner is that he had the report regarding the 13 original plicants and he selected one from among the remaining applicants.

This is not the usual procedure for filling up the casual vacancy, for, between the te on which the applications were invited originally and the date of falling of the sual vacancy, there may be other persons interested in applying for the posts d there is no justification for not filling up the casual vacancy in the usual manner ter calling for applications.

It is incumbent on the Commissioner in making the appointment to consider e comparative merits of the persons who are eligible for appointment and make e appointment There is no indication that the Commissioner considered either y of the qualifications or disqualifications of the applicants, who were included in e list that was before him. It is incumbent on the Commissioner to give reasons such appointment as the function is of quasi-judicial nature. The order of pointment of the trustee will have to be set aside.

Reading sections 46 and 47 together, it is clear that, when once the temple is ted, the Commissioner is required to constitute a Board of Trustees and there is provision for continuing the trustees appointed by the Area Committee. The pointment under section 49 of the Act by the Area Committee is only for a noned temple, and when the temple ceases to be one within the jurisdiction of the ea Committee and becomes a listed temple, it is taken out of the jurisdiction of the ea Committee, and the appointment of trustees can only be under section 47 of e Act

The plea of the petitioner that when once a trustee is appointed by the Area mmittee, he is entitled to be in the officer for the full term in spite of the fact it the temple is listed in the meanwhile, has to be rejected.

K Alagiriswami, for Petitioner.

Government Pleader, for 1st Respondent.

Manicka Ramalingam, for 2nd Respondent.

C Chenniappan, for 3rd Respondent.

S. Palaniswami, for 5th Respondent.

V S. — *Petition partly allowed.*

M—N R C

Alagiriswami, J
30th January, 1969.

Swaminatha Reddy
Kothanda Pill
C.R. P. No. 2063 of 196

Madras Cultivating Tenants Protections Act (XXV of 1955), *section* 4-A (3)—*Lan lord's petition to resume lands for personal cultivation—No offer by tenant to pay higher rent his counter—Tenant offering to pay higher rent (from* 2 *bags to* 3 *bags) in his evidence—Wheth tenant entitled to continue in possession.*

Section 4-A (3) of the Madras Cultivating Tenants Protection Act, 195 clearly permits a tenant, when a landlord asks for possession of half of the land und his cultivation for his own personal cultivation, to offer to pay the landlord the re which was payable in respect of that land before 27th September, 1955. On su offer being made, the Revenue Divisional Officer is bound to accept that offer an pass an order in its terms. This is not a privilege conferred on the tenant. It is right which he has under section 4-A (3) of the Act. The section itself does not sa at what stage the offer should be made.

Held, on facts, that the offer has been made before the order now sought to b revised was passed and that it is made as contemplated by section 4-A (3) Th tenant was allowed to continue in possession of the whole of the land on his givin the increased rent every year to the landlord.

M. V. Krishnan, for Petitioner.

K.V. Venkatarama Sarma, for Respondent.

S V J.

Revision Petition ordered i the above term

Alagiriswami, J.
24th February, 1969.

K. Srinivasa Iyengar
Noor Mohammed Rowthe
S.A.No. 605 of 196

Civil Procedure Code (V of 1908), *section* 73—*Rateable distribution—Suit for—Riva decree-holders—One decree-holder, in execution of his decree, purchasing some properties of jud ment-debtor and entering full satisfaction—Sale confirmed—Other decree-holder filing Executi Petition for attachment of properties purchased by rival decree-holder—Claim by purchas allowed—Execution Petition for sale of other properties of judgment-debtor—Dismissed f want of bidders—Claim for rateable distribution—Whether entitled to.*

When the defendant was executing the decree and realising his amount, th execution petition of the plaintiff was pending and therefore, he is entitled to a rat able distribution.

It is not necessary in order to enable a decree-holder to claim a rateable distr bution of the assets realised in execution by another decree-holder against th common judgment-debtor that he should pursue to the bitter end his remedies agair the judgment-debtor's other assets before he can claim a rateable distribution fro the rival decree-holder. Even if a decree-holder has realised a part of his decr amount before the rival decree-holder has filed his E P. and realised some assets h is entitled to claim rateable distribution from the rival decree-holder in respect the balance of the decree amount due to him and after getting a rateable distrib tion, it is open to him to pursue his remedies against the other properties of the jud ment-debtor in respect of the balance that may be due to him.

It would be open to the defendant to have the order entering full satisfacti set aside on rateable being ordered in favour of plaintiff and to proceed to execu his decree for the balance due to him out of the assets that might still be with jud ment-debtor. In any case the fact that full satisfaction of the defendant's decree w entered into is no ground for denying plaintiff's right.

Held, further that no question of equity can arise.

N. K. Ramaswami, for Appellant.

T. R. Ramachandran and *T. R. Rajagopal,* for Respondent.

S.V.J.

Second Appeal allowe No Leave.

Alagiriswami, J.
13th February, 1968.

Ibrahim Bivi *v.*
K M M. Pakkir Mohideen Rowther.
S.A No. 369 of 1964.

Mohamedan Law—Gift—House—By grandmother to grandson—Father natural guardian of minor, alive—Validity—Principles—Donor, if should vacate the house—Donor and donee living in the gifted house—Reservation of right of residence by donor—Acceptance of gift by minor reaching age of discretion—Delivery of possession—If should be made only to the natural guardian.

Under the Mohamedan Law, in the case of a gift of a house, it is not necessary that a donor should depart from the house in order to make the gift effective. If the donor and donee live in the same house that would be sufficient to show that possession has been given The reservation by the donor of the right to reside in the house along with the donee during his lifetime does not detract from the validity of a gift.

If the donee happens to be a minor and if he has attained the age of discretion he is competent to accept the gift. It is not necessary that in all cases, the donor should hand over possession to the natural guardian of the minor donee.

In proper circumstances, the donor can either constitute himself as the guardian or indicate some person, other than the natural guardian of the minor, as the guardian of the minor's property and hand over possession to such guardian if circumstances are such as to justify such a course of action.

All these, of course, apply only where there is a clear intention to make a gift and to deliver possession.

The gift in the present case by the grandmother in favour of her grandson was held to be valid.

T. R. Ramachandran, for Appellant.

K. Sarvabhawman and *T. R. Mani,* for Respondents.

V.S. —— *Appeal dismissed.*

Alagiriswami, J.
19th July, 1968.

Nagalakshmi Ammal *v.*
Rajagopala Iyer.
S A. No. 1152 of 1964.

Will—Construction—Bequest to a woman—Absolute interest or life interest—Mention of woman's daughters—No words of gift over.

Under a will executed in 1907 one *S* bequeathed certain properties to his daughter-in-law, *A*. The plaintiffs are the daughters of one of *A's* daughters, *R*. The defendants are the alinees from *R* herself. The question is whether the effect of the will is to give an absolute estate to *A*, so that her daughter as streedhana heir would only have life interest in the property and, therefore after her death in 1953, the defendants would have no further rights in the property or whether what *A* got was a life interest and *R* took an absolute interest after her and the defendants therefore get absolute title.

Held: The grandfather must have expected that the daughter-in-law would give the properties to her own daughters. Even so it is provided that she was to give it to her daughters as she pleased. The reference to the grand daughters was only an expectation rather than a mandatory direction or even a recommendation.

It is now well settled that merely because a property is given to a Hindu woman, a limited interest is not to be inferred. It is always a question of construction In most of the cases where a life interest is said to be taken by a woman, there is always a gift over to some other person and in such case, it could very well be said that what was given to the first person was only a life interest.

There is no such gift over in the instant case There is no power of appointment. Therefore the daughter-in-law got an absolute estate. There was no cut-

ting down of the effect of the earlier portion by which she was directed to enjoy the properties for her life time which are words of wide import.

Case-law discussed

T. R Srinivasa Iyer, for Appellant.

O. P. Srinivasan, *T R Ramachandran* and *Venugopal*, for Respondents.

V S —————— *Appeal allowed.*

Ramakrishnan, J
23rd August, 1968

Coimbatore District Co-operative Central Bank Employees Association, Coimbatore *v.* The Industrial Tribunal, Madras.
W P No 4422 of 1965.

Industrial Dispute—Bonus—Madras Co-operative Societies Act (VI of 1932), *Bye-law No* 28 *—Co-operative Bank—Award of bonus—Ceiling limit of three months' pay—Limit would govern industrial adjudication—No power in the Tribunal to award in excess of such statutory limit—Payment of Bonus Act (XXI of* 1965)*—Applicability*

For the year 1962-63, two months' pay was given as bonus to the employees of the Co-operative Bank, as allowed under bye-law No 28 framed under the Madras Co-operative Societies Act, 1932 The employees claimed bonus on the basis of the Labour Appellate Tribunal's formula The Industrial Tribunal, in dealing with the reference on the question of an additional bonus to such employees, held that the bonus should be increased to three months' pay (the maximum allowed under the bye-law No 28) The employees applied under Article 226 of the Constitution to quash the award

Held, while in the Madras Co-operative Societies Act of 1932 there is no statutory obligation to provide for bonus, the bye-laws framed under the Act restrict the computation of bonus, if it is to be awarded, by limiting it to a ceiling of three months' pay The bye-laws form an integral part of the constitution of a Co-operative Society and the society is bound to act up to the bye-laws Any act not in conformity with the bye-laws would imperil the very life of the society and expose it to the risks of supersession and its directors to the risk of a surcharge It is not open to the Industrial Tribunal to ignore the statute or rules and the bye-laws framed under it.

The unreported decision of the Supreme Court in Civil Appeal No 1630 of 1967 holding that after the statute provided in the Bonus Act for the computation and award of bonus as an essential obligation, it is the provision of that Act that should be applied for the calculation of bonus and not the general industrial principles laid down by the Labour Appellate Tribunl's formula, referred to

G. Venkataraman for *M/s Aiyar* and *Dolia* and *Ambrishkumar*, for Petitioner.

M R Narayanaswami and *D Meenakshisundaram*, for 2nd Respondent

V S. —————— *Petition dismissed.*

M. Anantanarayanan, C.J and
M Natesan, J.
6th September, 1968.

G Savarinathan *v* The Director of Postal Services, Madras.
W.A. No. 168 of 1968.

Fundamental Rules, rule 56 (j)*—Civil Servant—Retirement on reaching fifty five years —Termination by authority* bona fide *in the public interest—Jurisdiction of High Court under Article* 226 *of the Constitution to interfere—Constitution of India* (1950), *Article* 311.

Under Fundamental Rule 56 (*j*), the concerned authority, on the basis of relevant material on the files, came to the *bona fide* conclusion that the Officer should be retired in the public interest on his attaining the age of fifty-five years.

In the exercise of jurisdiction under Article 226 of the Constitution, it will not be the function of the High Court to canvass the adequacy of that material, or the

extent to which it is credible, particularly where the right to retire is not being imposed in the form of a punishment, but in the form of an option given to the authority under the statutory rules.

Since the implied covenent or the conditions of service under which the Officer entered the department and served till he was fifty-five years of age, can only be taken to mean that a Government servant should retire at fifty-five, and the extension of service upto sixty was very recent, the officer cannot say that if he is retired under rule 56 (*j*), that constitutes a punishment within the rigour of Article 311 of the Constitution

V. Rajagopalachari, for *T L. Nagaraja Rao*, for Appellant.

S Gov nd Swamina'han, Standing Counsel for Central Government, for Respondent.

V S. —— *Appeal dismissed.*

M Anantanarayanan, C J, and *M Natesan, J*
21st November, 1968

E M Narayanaswami *v.* T V Chinnathambi.
W A No 175 of 1966.

Madras Panchayats Act (XXXV of 1958), *section* 25 (1)—*Disqualification of candidates—Sentenced by a criminal Court to imprisonment for offence involving moral delinquency—Prescription of qualifying or disqualifying terms—If amounts to giving retrospective effect to Act—Five years from the date of expiration—What constitutes*

In the elections to the panchayat (the ward was a three member constituency and there were five nominations) the appellant secured 308 votes and of the two others who were elected, one got 323 votes and another 316 votes and the first respondent secured 13 votes and one withdrew On the election petition filed by the first respondent, the Election Tribunal set aside the election of the appellant on the ground of his disqualification under section 25 (1) of the Act and declared the first respondent as duly elected in the place of the appellant The appellant was convicted for an offence under section 406, Penal Code, and sentenced to two months rigourous imprisonment or 10th June, 1959 After the dismissal of the revision by the High Court, the appellant entered jail on 19th August, 1960, and after undergoing the sentence came out of jail on 3rd October, 1960 On the dismissal of the petition by the single Judge the appellant appealed.

Held, the application of section 25 (1) of the Act to the circumstances of this case is not really to give retrospective effect of the section The Act while conferring a right to get elected prescribes the existence, on certain facts as qualifying or disqualifying a candidate for election under the Act The fact that the Act depends, for its qualifying or disqualifying a person for election, on facts and circumstances existing at the time of its application which may have had their origin in past events or which may have been existing from a time antecedent to the coming into force of the Act, does not, properly speaking by itself, make the Act retrospective or retroactive in its operation

The presumption against retrospectivity of a statute is applied only to preserve an accrued or vested right To avoid the operation of a statute on the basis of the presumption, the right affected must be a vested right in the strict sense of the expression. The existence of a mere option, or of an opportunity to take advantage of rights and privileges under an existing enactment in citizens generally or any class of them without any act done by an invdividual availing for himself of the option or the opportunity is not property, a right accrued or right vested

The appellant has no vested right to get elected and the fact that he was not disqualified under the prior Act was neither here nor there

The effect of the reference back under section 25 (1) can only be, having regard to the previous words, that he shall be disqualified for election as a member while undergoing the sentence and for 5 years from the date on which, the sentence the

person was undergoing expired that is 5 years from the completion of the term of imprisonment.

While holding that the election of the appellant has been properly set aside the order of the election Tribunal declaring the election petitioner (who had secured only 13 votes) to be duly elected has to be quashed It follows that there is a vacancy and there will have to be fresh election.

M S Sethu, for Appellant.

The Government Pleader and *N. Arunachalam*, for Respondents.

V.S. — *Appeal partly allowed.*

Anantanarayanan, C J., Ramakrishnan and *Natesan, JJ.* *28th January*, 1969.

The Chief Controlling Revenue Authority *v.* M/s. Simpson and General Finance Co. Ltd. R C No. 2 of 1966.

Stamp Act (II of 1899), *section* 9 *and Madras City Municipal Act (IV of* 1919), *sections* 98 *and* 135—*Instrument transferring immovable properties—Exemption granted from stamp duty under Stamp Act—Whether Municipal Corporation can levy surcharge on such instrument.*

Held, section 98 (*h*) of Madras City Municipal Act itself makes it clear that the duty cannot be levied, in the case of an instrument, which is not liable to duty at all under the Stamp Act. The tax is an additional tax or burden upon a pre-existing tax under the Stamp Act, and could be appropriately levied, only where the instrument is liable to duty under the Stamp Act and not otherwise Where there is an instrument, which is not at all liable to stamp duty under the Indian Stamp Act, no surcharge could be levied, because, in law, this duty under section 98 has to be " in the form of a surcharge on the duty imposed by the Indian Stamp Act " Where the tax or charge itself cannot be levied on the ground of a statutory exemption, the question of imposing a further surcharge cannot legitimately arise.

Held on facts, the taxing power cannot be exercised by the Madras City Municipal Corporation

The Additional Government Pleader, for Referring Officer.

C. S. Padmanabhan for *M/s King & Partridge*, for Respondent.

S V.J. *Reference answered accordingly.*

Anantanarayanan, C.J, and *Natesan, J.*
13th August, 1968.

The Management of Messrs. Natarajan Engineering Works, Madras-1 *v.* Govindaswami Naicker.
W A.No 109 of 1965.

Industrial Disputes Act (XIV of 1947), *section* 12—*Conciliation proceedings—Works Manager of the employer permitted by the employer to represent the employer—Settlement signed by Works Manager for employer—Binding nature of settlement—If liable to be questioned after two years—Estoppel—Acquiescence—" Signed by the parties to the dispute"—Meaning.*

In the course of conciliation proceedings, the settlement of the matters in dispute was reported to the Conciliation Officer and a Memorandum of the settlement was drawn up under the terms of section 12 (3) of the Act by the individual worker and the employer represented by its Works Manager. The Works Manager was the actual signatory on behalf of the employer firm in the Memorandum of settlement Two years later when the concerned employee attempted to enforce the terms of the settlement, the employer firm contended that the terms were not binding on the firm as a signature on the Memorandum by the Works Manager did not bind the firm.

In the writ appeal,

Held : The employer permitted the Works Manager to appear on its behalf and to take part in the conciliation proceedings He held out that he was entitled to represent the firm for all purposes and he signed the agreement as representing the firm.

The workman might well have consented to the agreement altering his position in respect of defences or contentions open to him, because he was labouring under the belief that the Works Manager represented the firm for all purposes This is a clear case of estoppel and the employer cannot be permitted to resile from the representation It amounts to acquiescence since the employer must have been immediately aware of the agreement but it took no steps whatever to repudiate the agreement or the agency till the worker sought to implement the agreement two years later The firm also had the benefit of whatever industrial truce that followed the agreement.

It cannot be held that by the mere use of words " signed by the parties to the dispute " in section 12 of the Act the Legislature excluded all representation or agency No such words of exclusion are to be found in the statute The general rule must apply therefore that the party may himself sign or he may sign by some authorised person or representative who validly signed on his behalf

V. Thiagarajan, for *N. Suryanarayana*, for Appellant

S Ramasubramaniam for *Messrs. Aiyar* and *Dolia*, for Respondent No. 1.

The Government Pleader, for Respondents 2 and 3.

V S — *Appeal dismissed.*

Kailasam, J.
16th September, 1968

A. S V Varadachariar *v.* Commissioner of Police, Madras.
W P No 1720 of 1968

Writ of mandamus—*Police Officer—Duty to enforce the law of the land—If within the discretion of the officer—Jurisdiction of High Court—Writ, if can issue to a Police Officer to enforce the law—Unlawful occupation of the land of the petitioner—Criminal trespass—Writ of* mandamus—*Constitution of India* (1950), *Article* 226.

The petitioner prayed for the issue of a writ of *mandamus* directing the Commissioner of Police, Madras, to secure to him peaceful and quiet enjoyment of the property by removing the persons who were unlawfully remaining on the property. The Commissioner of Police raised the plea that whether police action is necessary in this regard or what action is to be taken is within the discretion of the police and that a *mandamus* sought for by the petitioner cannot be issued.

Held, it is the duty of the Commissioner of Police to determine whether the continued presence of the hut dwellers amounts to criminal trespass. If he comes to that conclusion, it is clearly his duty to evict the trespassers and give protection to the petitioner The plea of the Commissioner that it is within his discretion to take action or not has no basis in law and this plea should never have been advanced. It is his duty to enforce the law of the land

The Commissioner of Police will have to proceed to act in accordance with the directions indicated in the judgment

R v. *Metropolitan Police Commissioner*, (1968) 1 All E R. 763, referred

S. Gopalaratnam, for Petitioner.

T Selvaraj for the Government Pleader, for Respondents

V.S *Ordered accordingly.*

Ramakrishnan, J.
3rd December, 1968

A K Krishnamachariar *v* State of Madras, represented by Collector, Chingleput
W P No 1092 of 1966

Madras Additional Assessment and Additional Water Cess Act (*VIII of* 1963) *—Enhancement of assessment—Service of notice—By affixture in the first instance itself—Illegal —Notice of primary assessment and final assessment issued on the same date—Illegal—Writ.*

The petitioner, aggrieved by a demand made against him by the Revenue authorities for additional assessment and the additional water-cess under the Madras Additional Assessment and Additional Water Cess Act of 1963, and representing a substantial increase over the existing assessment applied under Article 226 of the Constitution to quash the proceedings

Held: The assessment made on the petitioner is in flagrant violation of the rules and has to be set aside.

The rules framed under the Act prescribing the procedure for the levy of additional assessment lays down that a notice shall be served by giving or tendering the same, to the person to whom it is addressed , or if such person is not found, by leaving the notice at his last known place of abode or business or by giving or tendering the same to some adult member of his family or by sending the notice to such person by registered post with acknowledgment due , or if none of the modes abovesaid is practicable, by affixing the same in some conspicuous part of such abode or business

The method adopted in this case, namely, affixture in the first instanc itself is illegal in the absence of an attempt to serve by the other methods of service prescribed under the rules

Following a provisional assessment there should be a notice with opportunity to the assessee to present his objection and thereafter only a final assessment should be made But where both the notice of the primary assessment and the final order of assessment were issued on the same date, the procedure would be illegal

R. Raghunathan, for petitioner.

J. Kanakaraj for Government Pleader for Respondent.

V S *Petition allowed.*

Ramaprasada Rao, J.
10th January, 1969.

M. A. Joseph *v.* Varadarajan.
C.R.P. No. 602 of 1968.

Civil Procedure Code (V of 1908), *section* 115 *and Order* 33, *rules* 1 *and* 5 (*d*-1)—*Plaint filed seeking relief of specific performance— Additional Court-fee called on the plaint—Petitioner applying to continue suit* in forma pauperis— *Rejection of application— Time for payment of additional Court-fee given— Ultimate rejection of plaint for non-compliance—Petitioner seeking to revise the earlier order refusing leave to continue the suit* in forma pauperis— *Revision competent— Practice.*

As the plaint in the suit was insufficiently stamped the petitioner was required to pay additional Court-fee The petitioner thereafter applied, under Order 33, rule 1, to continue the suit *in forma pauperis.* The application was rejected on the grounds that he has the means to pay the Court-fee and that suit was barred by limitation. Time was given to the petitioner to pay the additional Court-fee and ultimately the plaint was rejected on his failure to pay such additional fee. The petitioner filed a revision petition to the High Court against the earlier order refusing to allow the petitioner to sue as a pauper. On the question of the maintainability of the revision petition.

Held, the revision petition was maintainable. The interdict against the maintainability of a Civil Revision Petition under section 115 of the Code, is only in cases where there is no provision for appeal to the High Court against the impugned order The availability of a remedy by way of an appeal to the District Court or any other subordinate Court, is not a general bar to the entertainability of an application for revision.

The earlier order is a self-contained order and which can act on its own vigour and force. By this order the plaint was not rejected, nor did the order constitute a formal expression of adjudication, which can be said to have conclusively determined the rights of parties to the action with regard to any matter in controversy in the suit. Therefore the order challanged cannot be deemed to be a decree as defined in the Code.

No doubt the later order rejecting the plaint is in the nature of a decree under section 2 (2) of the Code Nevertheless it flows from the former order, which has an independent force of its own and therefore susceptible to the visitorial jurisdiction of the High Court under section 115 of the Code. The fact that at the inception a regular suit was filed does not matter.

No doubt the *lis* began with a plaint as is commonly understood. But the moment the application to continue the suit *in forma pauperis* was made, as the petitioner was unable to pay the additional Court-fee called, it ceased to be a plaint, but in fact became a plaint in the embryo.

N Sivamani and *V. Narayanaswamy,* for Petitioner.

T. R Srinivasan, for Respondent.

V.S.

Petition allowed.

Ramakrishnan, J.
15th January, 1969.

T.K.E. Mohammed Yousuff *v.* The Accommodation Controller, Trichirapalli.
W.P.No. 1554 of 1966.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 3—*Government obtaining possession of house for the requirements of Government servants—Allottee, licensee under the Government—Subsequent vacancies and allotments by Government—No cessation of relationship of statutory tenancy on each occasion—No need to intimate requirement of the premises by the Government—No right to the landlord to claim benefits of absence of such intimation.*

Once the Government obtains possession of any premises for the requirement of the Government servants, under the Act, a composite relationship is created whose

main features are, the statutory tenancy of the Government under the landlord, and the allottee's possession as a licensee under the Government, subject to certain conditions which give the allottee the liberty to enter into an agreement with the landlord about the quantum of rent, subject to the power of the Accommodation Controller to fix the rent where no such agreement is possible and subject to the statutory fixation of fair rent.

Possession during that period is deemed that of the Government; it is the Government who selects the allottee and also arranges for the subsequent allotments from time to time. At none of the intermediate stages, the position of the Government as a statutory tenant *vis-a-vis* the landlord comes to an end The landlord, on the arising of a situation where one allottee officer vacates the building, cannot claim that the landlord has a right to proceed under the machinery of the Act as if a vacancy has arisen afresh which gives him the right of giving notice of vacancy and the obligation of the Accommodation Controller to respond to the notice within seven days and the further right of the landlord to proceed to let out the building or occupy it himself in the event of the failure of the Accommodation Controller to give the necessary intimation that the premises are required by the Government.

T. Chengalvaroyan, for Petitioner

J Kanakaraj, for Government Pleader, for 1st Respondent.

K Alagiriswami for *V Ramaswami*, for 2nd Respondent.

V S. *Petition dismissed.*

K N Mudaliyar, J.
11*th March*, 1969.

V. S. S Syed Ahmed, *In re.*
Crl R.C No. 883 of 1967.
Crl R P. No. 870 of 1967.

Penal Code (XLV of 1860), *section* 441—*Criminal trespass—Intent to commit an offence, or to intimidate, insult or annoy any person in possession—House property—Civil proceedings pending between parties—Accused ejecting near relations of person in possession from house, throwing things on the ground, bolting the house and remaining inside the house—Effect.*

Pending civil proceedings between the petitioners and P W. 1 in respect of a house of which P.W. 1 was in possession, petitioners went to the house and beat the relatives of P.W. 1, pushed them out of the house and threw the vessels and furniture on the ground. The petitioners bolted the house from inside and remained there until taken away by the police to the Police Station On the question if the conviction under section 448 of the Penal Code is sustainable,

Held, the ingredients of intent to annoy, intimidate or insult or to commit an offence under section 441 of the Penal Code was proved

The cover or alibi of civil proceedings pending between the parties would not invest the entry of the petitioners with the character of a *bona fide* right to be exercised on their part, more so when the proceedings were pending in a civil Court and both the parties were awaiting the final outcome of the proceedings.

Not merely that the likely consequence of the entry was known to the petitioners entering, but the aim of the entry of the petitioners was to cause annoyance, intimidation or insult when they ejected the persons

K. Ramaswami and *A Sarojini Bai*, for Petitioners.

Calwin Jacob for the Public Prosecutor, for the State.

V.S. *Petition dismissed*

Venkataraman, J.
26th June, 1968.

Rajammal *v.*
Associated Transport Co.
A.A.O. No. 88 of 1965.

Motor Vehicles Act (IV of 1939), *sections* 110, 2 (14), 95 (1) (*b*), 96—*Claims tribunal—Lorry laden with iron shafts—Sliding of shafts killing a casual labourer sitting on top of the iron shafts—Excessive speed of driver—Negligence—Liability of owner—*Prima facie *case of negligence—Examination of driver—Onus on owner of lorry—Place of accident not a 'public place' as defined in the Act—Insurance company—Not liable—Compensation—Quantum*

Claims Tribunal—Compensation—Death on account of negligence of lorry driver—State Prosecutor—Opinion not to prosecute—Not binding in proceedings under the Act.

The owner of the vehicle would be liable to pay compensation since the death took place on account of the negligence of his driver. The Insurance Company is not liable as the place where the accident occurred was not a public place within the meaning of section 2 (24) of the Act.

Though there is no direct evidence of the speed of the vehicle at the time of the incident there is circumstantial evidence which is sufficient to show that the driver had driven the vehicle at a speed which must be considered excessive

The very fact that the iron shafts slipped down from the lorry and that the lorry stopped 50 feet from where the deceased had fallen down also, shows that the lorry had been travelling at an excessive speed.

There can be no doubt that if any body had to examine the driver, it was the owner of the lorry who had to do it. It is unreasonable to expect the petitioner to have examined the driver The petitioner had let in sufficient evidence *prima faice* to show that there was negligence on the part of the driver and in order to rebut that inference it was the owner who had to examine the driver.

The proper inference is that the driver was driving the vehicle at an excessive speed and was guilty of negligence and it is that negligence that has resulted in the fatal injuries causing death

The opinion by the State Prosecutor that the driver need not be prosecuted and that the case was one of pure accident is not binding on the Claims Tribunal or the High Court.

It is clear from the definition of a public place in section 2 (24) that the criterion is where the public have a right of access to the place and it will not be a public place merely, if as a matter of fact, the public have access.

The contention that it is not open to the Insurance Company to take up this defence because that it is not one of the defences enumerated in section 96 (2) of the Act, has no force because before section 96 (2) comes into play, the liability of the Insurance company must arise under section 95 (1) (*b*) and if under section 95 (1) (*b*) they are not liable on the ground that the vehicle was not used in a public place as defined in the Act, section 96 (2) does not come into play at all. Otherwise it would mean that section 95 (1) (*b*) making a reference to a public place would be a dead letter It is significant to note that section 96 (1) itself speaks of the policy required to be issued under clause (*b*) of section 95 (1).

On facts, the evidence as accepted by the Claims Tribunal was that the deceased was earning about Rs. 5 per day After allowing for his own food and clothing, he could provide Rs 2 50 per day to his family and this worked out to Rs 75 a month. The deceased was aged about 39 years The Tribunal fixed Rs. 10,000 as compensation, if payable. The deceased being a casual labourer, was not entitled as of right to work every day in the month The deceased himself was negligent in sitting on the top of the iron shafts. A sum of Rs 6,500 was awardable as compensation.

P P Selvaraj, for Appellant.

P. B. Anantachari and *T.T. N. Vallinayagam* and *Sundararajan* and *Sivaswami*, for Respondents.

V.S. —— *Appeal allowed.*

M—N R C

M. M. Ismail, J.
15th July, 1968

Mottur Hajee Abdul Rahman & Co. *v.*
Dy. Commer Tax Officer, Vaniyambadi.
C. M P. Nos 7795 & 7797 of 1968
in W P. Nos 1857 and 1858 of 1968.

Contempt of Court—Madras General Sales Tax Act (I of 1959), *Schedule II, item* 7 *—Validity—Writ petition admitted and interim stay of further proceedings made—Notice by Department to assessee requiring him to furnish security for taxes due—Amounts to contempt.*

Held, the subsequent notice issued to the petitioner does constitute contempt of the High Court

No Officer of the Government however high or exalted he may be, can take upon himself the responsibility of judging the correctness or validity of an order of any Court and if he honestly and *bona fide* in the discharge of his functions, feels that the order is erroneous or requires any modification, the only remedy open to him is to approach that Court

But the Court accepted the unconditional apology tendered by the respondents and dropped further proceedings.

R Kesava Iyengar for *K Yamuna,* for Petitioner.

The Assistant Government Pleader, for Respondents.

V.S. ——— *Ordered accordingly.*

Alagiriswami, J.
19*th July,* 1968.

Jayarama Mudaliar *v.*
Ayyaswami Mudaliar.
S A No. 1173 of 1964.

Transfer of Property Act (IV of 1882), *section* 52– Lis pendens– *Doctrine of– Applicability– Land Improvement Loans Act (XIX of* 1883), *section* 7 *(c)– Revenue sales in respect of loans taken under the Act—Applicability of principle of* lis pendens

The principle of *lis pendens* enacted in section 52 of the Transfer of Property Act would not extend to an involuntary alienation in execution of a mortgage decree where the mortgage was prior to the suit in which the doctrine is relied on The rights of the purchaser in execution of such mortgage decree would date back to the date of the mortgage

The doctrine of *lis pendens* does not affect sales under the Revenue Recovery Act But in view of the provisions contained in section 7 (*c*) of the Land Improvement Loans Act, 1883, the principle that *lis pendens* cannot apply to revenue sales is confined to the property for the improvement of which the loans under that Act were taken and not all the properties covered by the revenue sales

V V Raghavan, V N Krishna Rao and *B Balaramalingam,* for Appellant.

T R. Ramachandran, K. Chandramouli and *R Shanmugam,* for Respondents 1 and 6 to 9.

V.S. ——— *Ordered accordingly.*

Sadasivam, J.
16*th January,* 1969.

K.S. Raghavan *v.*
The State.
Crl R.C No. 331 of 1967.
Crl R.P. No 327 of 1967.

Madras City Municipal Act (IV of 1919), *section* 287—*Offence under—Failure to take out a license for running a licensed trade—If only owner or occupier alone is liable.*

It is no doubt true that section 287 (3) of the Madras City Municipal Corporation Act enjoins the owner or occupier alone to take out a license for using a premises for any of the purposes mentioned in Schedule VI of the Act. But that does not mean that only the owner or occupier of a premises will be liable for contravention of the provisions of section 287, *viz.,* failure to take out a licence in respect of any

trade carried on in the premises which requires to be licensed. The offence under section 287 consists in using a place for any of the purposes specified in Schedule VI without license or contrary to the terms and conditions of the licence. The prohibition is against any one using the premises contrary to the section. Hence any person whether he be the owner, occupier, employee or tenant, found carrying on a trade which requires a licence under Schedule VI of the Act, without a licence in that regard, can be prosecuted for contravention of section 287 of the Act.

V R Venkataraman, for Petitioner.

R. Veeraswami for Public Prosecutor, for 1st Respondent.

T A Ramaswami Reddy, for 2nd Respondent.

R M. ——— *Revision dismissed.*

Ramakrishnan, J
21st January, 1969

O N. Muthu Ramalingam *v.*
T. M Sembuselli Gounder.
W.P Nos. 1572 and 2301 of 1966.

Madras Co-operative Societies Act (LIII of 1961), *section* 27 (3) (*a*), *Chapter V of the Rules, rules* 29 (2), 29 (5) (*iii*), 29 (6) (*i*) (*c*) *and* 30 (2)—*Co-operative Bank—Executive Committee and President—Elections for the first time under the Act—Retirement of one-third at the end of year—Rules prescribing persons seeking election not to take part in any stage of the conduct of election—G O exempting such procedure for the first elections—Outgoing President a candidate for election—Calling for and scrutiny of nomination papers and conduct of election by outgoing President—Election to be quashed as opposed to fair play and principles of natural justice—Writ at the instance of aggrieved petitioners who withdraw their nominations—Maintainable—Constitution of India* (1950), *Article* 226

The petitions have to be allowed and the impugned election of the respondents in these writ petitions has to be set aside

The fact that the course adopted in the case was necessitated by the exigency arising in the case of election for the first time under the new Act, is hardly a circumstance which would justify a result in which a person is made to appear, so to speak, to be a judge in his own cause That violates not merely the principles of natural justice but also the principles of fair play and free election, essential to be observed in a democratic set up

The fact that the petitioners withdrew from the election after filing nomination papers feeling aggrieved against the unsuitable method proposed for the several subsequent stages of the election would not be a ground for denying the remedy which they now seek The petitioners withdrew because they were aggrieved against the arrangements made for the conduct of the election from the time of the receipt of the nomination papers, their scrutiny and the subsequent holding of the election If the procedure at any of these stages in which they took part is irregular, the petitioners certainly can seek for relief in this writ proceeding.

S Mohan, for Petitioner and
P S Srisailam, for Respondent in W P No. 1572 of 1966
P S Narasimhan, for Petitioner and
M Chenniappan, for Respondents 9 and 10 in W P No 2301 of 1966.
J Kanakaraj, for Government Pleader, for 1st Respondent.

V S. ——— *Petition allowed.*

K Veeraswami, J.
17th February, 1969.

M. Allauddin *v.*
P.S Lakshminarayanan.
C R P.No 618 of 1968.

Civil Procedure Code (V of 1908), *Order* 6, *rule* 17 *and Order* 7, *rule* 10—*Suit for permanent injunction restraining defendant from interfering with possession—Amendment—Application to add a prayer for recovery of possession—Dismissal on the ground that amendment, if allowed, would render suit beyond pecuniary jurisdiction—Order unsustainable—Proper procedure.*

Plaintiff filed the suit for a permanent injunction restraining the defendant from interfering with his possession. On the allegation of the defendant raised in a

counter affidavit filed by him in an interlocutory application, the plaintiff filed an application for an amendment seeking to add a prayer for recovery of possession The application was dismissed on the ground that the property had a potential value as a house site and if the amendment were allowed, the value for purposes of jurisdiction would probably exceed the Court's powers. On that view the District Munsif directed the plaint to be returned for presentation before the proper Court and set a date for getting the plaint ready and when the Court found that the plaint was not so ready he dismissed the application.

Held, in revision : the order of the District Munsif cannot be sustained.

The Court below is the Court properly in seizin of the plaint as it is and it is only as and when the amendment is allowed the question would arise whether that Court could try the suit having regard to the enhanced valuation of the suit property for purposes of Court-fee and jurisdiction.

The right course to adopt is to allow the amendment, grant an opportunity to the plaintiff to pay the deficit Court-fee and if there is any question about pecuniary jurisdiction arising examine the matter and if necessary in the light of a report to be called for from a Commissioner and on a definite finding on that question, to decide whether the plaint should be retained or will have to be returned to the plaintiff as one in excess of the pecuniary jurisdiction of the Court.

T. S. Subramanian for *T. R Srinivasan*, for Petitioner.

K. Hariharan and *P. Viswanathan*, for Respondent.

V S. ——— *Petition allowed.*

Kailasam, J
21*st February*, 1969.

V Nagalingam *v.* Sivagnanam.
W P No 1956 of 1967.

Madras Panchayats Act (XXXV of 1958), *section* 25 (2) (*c*)—*Disqualification—Subsisting contract—Panchayat Union Council—Elections of Chairman—Candidate, member of a Co-operative Society having subsisting contracts with the Panchayat Union—Entails disqualification—Election as Chairman can be challenged though election as member of Panchayat was not called in question.*

The petitioner and the respondent, by virtue of their being elected as Presidents of two panchayats, became the members of a Panchayat Union Council On the date of nomination for election of Chairman of the Panchayat Union Council, the respondent continued to be a member of a Labour Contract Co-operative Society which had two subsisting contracts with the Panchayat Union Council for the construction of a hospital and roads An election petition challenging the election of the respondent as Chairman was dismissed. The petitioner applied under Article 226 of the Constitution

Held, the respondent is disqualified for election as Chairman, under section 25 (2) (*c*) of the Act

Under section 25 (2) (*c*) a person taking any kind of interest direct or indirect, personal or through being a member of a society which has a subsisting contract with any Panchayat or Panchayat Union, at the date of nomination or election, will be disqualified

It is open to the petitioner to challenge the validity of the election of the respondent as Chairman of the Panchayat Union Council The contention that when once the election of the respondent as member of the panchayat was not questioned it was not open to him to question the validity of election to the Chairmanship of the Panchayat Union cannot be accepted

V. V Raghavan, for Petitioner

V K Thiruvenkatachari, for *R G Rajan*, for 1st Respondent.

V.S. ——— *Petition allowed.*

[END OF VOLUME (1969) 1 M L.J. (NOTES OF RECENT CASES)].